SUBJECT INDEX

	Page
CITATIONS TO OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT	3
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	10
APPENDIX A - Opinion of the United States Court of Appeals for the Ninth Circuit	13
APPENDIX B - Judgment of the United States Court of Appeals for the Ninth Circuit	23
APPENDIX C - U.S. District Court's Order Denying Petitioners' Motion to Suppress	25
APPENDIX D - Statutes Involved	33

TABLE OF AUTHORITIES CITED

Page

CASES

Alexander v. United States, 362 F. 2d 379 (9th Cir. 1966) 7

Carroll v. U.S., 267 U.S. 132, 154, 45 S. Ct. 280, 285, 69 L. Ed. 543 (1925) . 8

Marsh v. U.S. of A. 344 F. 2d 317 (1965) 8

U.S. v. Kaplan, 47 F. 2d 587 6

U.S. v. Yee Ngee How, 105 F. Supp. 517, 519, et seq. 8

STATUTES

19 U.S.C.A., Sections 496, 497 6

21 U.S.C., Section 174 . . . . . 3, 9

CONSTITUTIONS

Constitution of the United States, Fourth Amendment 8, 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No.

LAWRENCE LEWIS,

Petitioner,

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Lawrence Lewis, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on April 5, 1967.

CITATIONS TO OPINIONS BELOW

Ninth Circuit. The opinion of the Court of Appeals of April 5, 1967 is not reported at this date but is set forth in Appendix A, infra, page 13.

District Court. The findings of fact and conclusions of law relating to motions to suppress evidence and the order of the district court denying petitioner's motion to suppress (No. 35814-SD) are set forth in Appendix C, infra, page 25.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on April 5, 1967, and is set forth in Appendix B, infra, page 23. The jurisdiction of this Court is invoked under 28 U. S. Code, section 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence used against the petitioner in the federal prosecution was obtained in violation of his rights under the Constitution of the United States.

2. Where an informant for the government drives a vehicle across an international border, which vehicle is not inspected at the border though stopped, then proceeds to a garage 5-6 miles from the border where he, the informant, meets with various government agents, then proceeds to an alleged rendezvous with petitioner 8-10 miles from the garage, has there been a violation

of petitioner's rights under the Constitution, where petitioner is charged with unlawful importation, where there has been a search of the vehicle without a warrant, the agent searched the vehicle without probable cause and the time, distance from the border and previous interception of the vehicle prevented the search from being classified as a border search?

STATUTES INVOLVED

The statutory provision involved here is Title 21, U. S. C. Section 174. This statute is set out verbatim in Appendix D, infra, page 33.

STATEMENT

Petitioner was tried under the one-count indictment which alleged that petitioner Lewis knowingly concealed, and facilitated the transportation and concealment of, approximately six ounces of cocaine and one ounce of heroin, narcotic drugs, which as he then and there well knew, had been imported and brought into the United States contrary to law. (C. T. 2.) [Reference to the Clerk's transcript are hereinafter designated C. T., and references to the Reporter's Transcript are hereinafter designated R. T.]

Subsequent to the indictment there was a motion to suppress evidence obtained by illegal arrest and illegal search and seizure filed on December 21, 1965, said motion was heard on January 31, 1966 and denied as to petitioner.

Jury trial of petitioner commenced on February 1, 1966, before United States District Judge James M. Carter (R. T. 2). Petitioner was found guilty as charged on February 2, 1966 (R. T. 218-19).

On March 7, 1966, petitioner Lewis was sentenced to seven years in prison.

Petitioner filed a timely notice of appeal (C. T. 17-18). An appeal duly followed to the Court of Appeals for the Ninth Circuit, which court affirmed the judgment of the District Court as to appellant Lewis. This petition seeks review of the court's action in denying the relief sought by appeal.

The evidence adduced as to petitioner during the trial was as follows:

Government agents received a tip from an informant that certain narcotic drugs would be brought into the San Diego area by a person driving a 1955 Ford Station Wagon. Acting on said tip, Government agents stopped the 1955 Ford Station Wagon at the border but did not inspect it at that time. The 1955 Ford Station Wagon was followed into San Diego. While following the 1955 Ford Station Wagon, Government agents noticed a 1963 Buick automobile following the 1955 Ford Station Wagon, said Buick automobile containing the petitioner Lawrence Lewis and one Louise Lee. The 1955 Ford Station Wagon was driven to a garage in Chula Vista where it was parked and the driver conversed with the Government agents. The 1955 Ford Station Wagon was allowed to proceed to the Logan Heights area of San Diego where it was parked at approximately 43rd and Oceanview. Its

occupant got out and left the automobile. The 1963 Buick automobile stopped and petitioner Lawrence Lewis left the 1963 Buick automobile and entered the 1955 Ford Station Wagon. Mr. Lewis then drove off in the 1955 Ford Station Wagon.

A Government agent tailing the 1955 Ford Station Wagon stopped it after it had been driven a few blocks and the petitioner was taken into custody. Subsequently, the 1955 Ford Station Wagon was searched and was found to contain a quantity of narcotic drugs.

REASONS FOR GRANTING THE WRIT

The Constitutional Rights of petitioner Lewis were violated by the admission of evidence obtained by a Customs Officer purportedly having reasonable grounds to believe that the car in question contained narcotics upon crossing the international border. Had there been an inspection of the automobile at the international border, and a constant surveillance from that point, no question would be raised concerning the reasonable grounds to believe narcotics were in the vehicle. From the evidence, it is clear that not only had the vehicle not been inspected, but it stopped for a period in Chula Vista on the United States side of the border. It is no flight of fancy to presume that the narcotics later found in the vehicle could have been placed there in Chula Vista.

The United States Customs Agent Ellis had received word from the informant Sandoval, but the Agent Ellis failed to obtain a warrant of search though he had

an opportunity to acquire the warrant. On the word of Agent Ellis one Samaduroff, a Customs Agent, followed the automobile into San Diego. After the petitioner Lewis picked up the automobile, an arrest was made. Petitioner's rights, under the Fourth Amendment to the Constitution, were violated at that moment. There was a search and seizure made incident to an unlawful arrest.

Prior to the observation of the 1963 Buick automobile on the United States side of the border, the Customs Agents were unaware of the presence of petitioner Lewis in the area. No evidence was shown which substantiated any view that the Customs Agents observed the 1963 Buick automobile crossing the international border. Therefore, as to petitioner Lewis, who was an occupant of the 1963 Buick automobile, there was no connection with the 1955 Ford Station Wagon. Not until the Customs Agent observed the Buick tailing the Ford, did any connection become apparent. If Agent Samaduroff made an arrest of petitioner Lewis, it was not on any reasonable grounds based on information received from the informant Sandoval. Sandoval did not testify that he knew petitioner, or had ever seen him before. There was therefore, no probable cause to arrest petitioner Lewis.

As to the automobile, if there were a probable cause for search at the border, that reason ceased to exist after the 1955 Ford had stopped in Chula Vista in a garage. The later found narcotics could have been placed in the vehicle at that time. The chain had been broken. Search of an automobile without warrant and without probable cause is illegal. 19 U. S. C. A. Sections 496, 497, U. S. v. Kaplan, 47 F. 2d 587. The petitioner's

rights under the Constitution had been violated and the Court below erred in not having reversed the order of the District Court which denied petitioner's motion to suppress based on an illegal search and seizure.

The Court of Appeals erred in affirming the judgment below because without reasonable grounds for the search and seizure, there was no valid grounds for the arrest. The contention that there was a valid border search, where neither warrant nor probable cause is necessary, is untenable. Again petitioner Lewis' Constitutional Rights had been violated. To constitute a valid border search, it is conceded that the search need not be made at or near the immediate vicinity of the point of the international border crossing. However, it was stated succinctly in Alexander v. United States of America, 362 F. 2d 379 (1966), that the

> "Legality of search must be tested by determination (of) whether (the) totality of surrounding circumstances, including time and distance elapsed as well as manner and extent of surveillance are such as to convince (the) factfinder with reasonable certainty that any contraband which might be found in or on vehicle at time of search was aboard (the) vehicle at (the)time of entry into jurisdiction of United States".

In all of the cases which support the theory of valid border search, the individual arrested was the individual observed crossing the border in the vehicle. Here petitioner Lewis was not even observed crossing the

border.

Furthermore, border searches are not exempt from the constitutional test of reasonableness. U. S. Const Amend IV; U. S. v. Yee Ngee How, 105 F. Supp. 517, 519, et seq. It was stated in Carroll v. U. S. (1925), 267 U. S. 132, 154, 45 S. Ct. 280, 285, 69 L. Ed. 543.

> "Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in and his belongings as effects which may be lawfully brought in. But those lawfully within the country entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, (and there is) probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

There was no known connection between the suspected vehicle and the petitioner, even at the time of the arrest. If there existed probable cause for the search of the vehicle, and this point is bitterly contested, the person of the petitioner heretofore unconnected with the vehicle could not be searched, and any evidence obtained from the vehicle should have been suppressed as to petitioner Lewis.

Finally, as it was stated in Marsh v. U. S. of A., 344 F. 2d 317 (1965), where a search conducted 63 miles

from the border was held to be illegal,

> "... if the government seeks to qualify the action as a geographically 'extended' border search, it must show at least the circumstances known to the officers at the border which reasonably justified the request relayed to officers in the interior. Any other doctrine would render travelers who had recently entered this country subject to almost unlimited arrest and search without any cause save the simple request of a border officer to one at an interior point".

The case here for protection of petitioner's Constitutional Rights under the Fourth Amendment is stronger. If the order denying the motion to suppress was correctly affirmed on appeal, theoretically any individual crossing the border with or without knowledge of the contents of the car, who had any connection with said 1955 Ford Station Wagon, could be indicted under 21 U. S. C., 174.

We urge the Court to examine the decisions relating to the border search without probable cause and note carefully the distinguishing factors in the present petition. The Court's refusal to reverse the order denying the motion to suppress resulted in a violation of petitioner's Constitutional Rights and permitted the admission of evidence under an illegal search and seizure.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

ROBERT A. WARD

Counsel for Petitioner,
Lawrence Lewis

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LOUISE LEE, LAWRENCE LEWIS, Appellants,	)	
vs.	)	No. 21,042
UNITED STATES OF AMERICA, Appellee.	)	

[April 5, 1967]

Appeal From the United States District Court
For the Southern District of California
Southern Division

Before: CHAMBERS, HAMLEY and DUNIWAY, Circuit Judges

HAMLEY, Circuit Judge:

Lawrence Lewis was convicted, after a jury trial, of the offense of knowingly concealing and facilitating the transportation of illegally imported narcotics, in violation of section 2(c) of the Narcotic Drugs Import and Export Act, 35 Stat. 614 (1909) as amended 21 U.S.C. § 174 (1964). Louise Lee, tried jointly with Lewis, was convicted of the offense of aiding and abetting the

concealment of the same narcotics in violation of the same statute.

On this appeal Lewis and Miss Lee raise search and seizure questions. Prior to the trial Lewis and Miss Lee moved to suppress the narcotics on which their convictions were obtained, contending that this evidence had been obtained as the result of an unlawful search and seizure. The court, after an evidentiary hearing, denied the motions on several grounds.[1] When the narcotics were offered in evidence at the trial, Miss Lee and Lewis objected on the grounds stated in their motions to suppress. Their objections were overruled and the narcotics were received in evidence.

The circumstances surrounding the search and seizure are not in dispute. On October 8, 1965 United States Customs Agent Thaine Ellis was informed by Leobardo Sandoval, a previously reliable informant, that a 1955 Ford station wagon bearing California license GNP-408 would be used to transport a quantity of narcotics into the United States from Mexico. According to Sandoval, the narcotics were to be delivered to the Logan Heights area of Chula Vista, California, which is about six miles from the San Ysidro, California port of entry. Early on October 9, 1965, Sandoval informed Agent Ellis that the station wagon would cross

---

[1] The court held that the search and seizure were proper on three grounds, namely: (1) the officers had reasonable grounds to believe that the car in question contained narcotics, (2) the search and seizure of the car were incident to a lawful arrest, and (3) since the car was continuously under the surveillance of federal authorities, the search could be considered a valid border search. Miss Lee's motion to suppress was denied on the additional ground that she did not have standing to object to the search and seizure.

the boundary line after 10:00 o'clock that morning.

About 11:45 a.m. that day Ellis was informed by an officer at the San Ysidro port of entry that he had stopped the station wagon and sent it to a secondary inspection area. Ellis, who was in charge of the case, ordered that there be no search of the station wagon at the time and that it be permitted to proceed. At Ellis' direction, another customs agent, George R. Gore, followed the station wagon after it was released at the port of entry. Gore later informed Ellis by radio that he was being followed by a 1963 Buick with Nevada license plates, the Buick being occupied by a man wearing a white shirt, and a woman. Ellis told Gore over the radio to let the Buick pass him. As the Buick passed, Gore noted that its license number was C-68561, and reported this number to Ellis by radio.

Ellis was also in the vicinity in another car and, upon seeing the station wagon, discovered that it was being driven by the informant, Sandoval. Ellis pulled up beside the station wagon and told Sandoval that he was being followed by a Buick, a fact which Sandoval had not known.

Sandoval continued on with the station wagon and a little later, Ellis stopped it again and once more talked with Sandoval. The Buick was no longer following Sandoval's car. At this time Sandoval told Ellis that his instructions were to park the station wagon at Forty-Fifth and Ocean View, in the Logan Heights area of Chula Vista. Sandoval told Ellis he had been instructed to leave the keys in the vehicle and take up a position some distance away, after which someone would drive

the station wagon away and return with it about an hour later so that Sandoval could drive back to Mexico.

On that same morning, October 9, 1965, Ellis had telephoned Customs Agent Paul Samaduroff for his assistance in the case and told Samaduroff that there was reliable information that a station wagon was to enter the United States at the San Ysidro port of entry, and was supposed to have narcotics in it. Working under Ellis' direction, Samaduroff thereafter cruised in another car in the Logan Heights area of Chula Vista, maintaining radio contact with Ellis.

Samaduroff saw the station wagon parked at Forty-Fifth and Ocean View in that area. Ellis advised Samaduroff by radio that a Buick with Nevada license plates had been following the station wagon and was in the area where the station wagon was parked. Samaduroff later saw the Buick, occupied by a man in a white shirt, and a woman, parked not far from the station wagon. He saw the man start walking towards the station wagon and reported this over the radio.

Samaduroff then parked his own car nearby. He was advised by radio that the man in the Buick had entered the station wagon. The woman occupant of the Buick began driving away in that car, and the man who had entered the station wagon began driving that vehicle in a different direction.

The station wagon stopped in front of a grocery store at Logan and Forty-Fifth, in Chula Vista. Ellis then instructed Samaduroff by radio to "pick up the Ford with occupant." Samaduroff, who was accompanied by

Customs Port Investigator Prentice N. White, arrested the sole occupant of the station wagon, who turned out to be Lewis. A subsequent search of the station wagon led to the discovery of the narcotics.[2] No warrant had been issued for the arrest of Lewis, nor had a warrant been obtained for the search of the station wagon. Miss Lee, who drove away in the Buick, was arrested later. No narcotics were found in that vehicle.

Lewis contends that the district court erroneously determined, on these facts, that the search and seizure were lawful. He apparently concedes that the search and seizure were lawful if, as the district court held, they were proper incidents of a lawful arrest. He argues, however, that the arrest was not valid because Samaduroff, proceeding without an arrest warrant, did not have reasonable grounds to believe that Lewis had committed, or was committing a federal offense. Reasonable grounds were lacking, Lewis asserts, because while Ellis had informed Samaduroff that Lewis was then committing the offense of transporting narcotics, this ". . . does not fall within this category of cases. . . . " holding that information from a reliable third person is sufficient to justify arrest without a warrant.

If Ellis had made the arrest, he would have had reasonable grounds for doing so. We so hold in view of the information Ellis had received from a reliable informant, as supplemented by what he observed and what Samaduroff had observed and reported to Ellis over the radio. Therefore, Samaduroff, a subordinate of Ellis in the same enforcement agency, working

[2]Lewis does not contend in this court that the search was unreasonable because it did not occur at the place and time of the arrest.

under Ellis' direction at the time, and making the arrest at the request of Ellis and upon the basis of information supplied to him by Ellis, corroborated by what Samaduroff himself had observed, had probable cause to make this arrest. [3]

The district court did not err in holding that the search and seizure were legal.

Miss Lee contends, in effect, that the evidence is insufficient to support her conviction of the charge of aiding and abetting Lewis in concealing the illegally imported narcotics in the station wagon. She contends that the district court therefore erred in denying her motion for judgment of acquittal.

In arguing that the evidence was sufficient to

[3] See Williams v. United States, D.C. Cir., 309 F.2d 326, 327; United States v. LaMacchio, 3 Cir., 362 F.2d 383, 385; Smith v. United States, D.C. Cir., 358 F.2d 833, 835; United States v. Bianco, 3 Cir., 189 F.2d 716, 719. Cf. Ferganchick v. United States, 9 Cir., ___ F.2d ___, decided March 20, 1967.

The court stated in Williams:

> "We avail ourselves of the occasion to make it clear that in a la a large metropolitan police establishment the collective knowledge of the organization as a whole can be imputed to an individual officer when he is requested or authorized by superiors or associates to make an arrest. The whole complex of swift modern communication in a large police department would be a futility if the authority of an individual officer was to be circumscribed by the scope of his first hand knowledge of facts concerning a crime or alleged crime.
>
> "When the police department possesses information that would support an arrest without a warrant in the circumstances, the arresting officer, if acting under orders based on that information, need not personally or first hand know all the facts. The test, as we have said, is whether a prudent and cautious officer in those circumstances would have reasonable grounds - not proof or actual knowledge - to believe that a crime had been committed and that appellant was the offender.

convict Miss Lee as an aider and abettor to Lewis in the concealment of the narcotics found in the station wagon, the Government correctly states that the jury could have found the facts to be as follows: Miss Lee and Lewis had driven together in the Buick from Las Vegas, Nevada to Tijuana, Mexico, arriving at Tijuana about 8:30 or 9:00 a.m. on October 9, 1965. Later that day she was a passenger in the Buick, driven by Lewis, which followed the station wagon along U.S. 101 alternate, some six miles en route from the San Ysidro port of entry to Chula Vista, California. When they arrived in Chula Vista, she remained in the Buick when Lewis got out and started walking towards the station wagon. She then drove off in the Buick.

Ellis and his colleague followed the Buick and stopped it a few blocks away. The officers got out of their vehicle and approached the Buick, whereupon Miss Lee attempted to escape in her vehicle. However, the officers gave chase in their automobile and forced her to stop. Miss Lee, who testified in her own defense, made no claim that she did not know that Ellis and his companion were officers. When Miss Lee was told by the arresting officers that her male companion had been arrested, she did not indicate surprise, but stated "I want to be with him."

Miss Lee provided a false address, a false age, and a false occupation, either at the time of arrest or at the time of trial. She testified falsely that she did not tell the officers that she had previously lived on Normandy Street in Los Angeles; testified falsely that she was not advised of her right to an attorney; and contradicted, on cross-examination, her statement,

on direct examination, that she stopped in Los Angeles on the trip from Las Vegas to Tijuana.

Miss Lee was indicted for the offense of knowingly aiding and abetting Lewis in committing the offense of knowingly concealing and facilitating the transportation of narcotics unlawfully imported into the United States. The jury brought in a verdict against her of "guilty as charged in the Indictment in one count." (emphasis in original.) Apparently through inadvertence, the judgment thereafter entered adjudged her guilty only of aiding and abetting the "concealment" of narcotics, nothing being said about aiding and abetting Lewis in "facilitating the transportation" of the narcotics. However, since the judgment is subject to correction to conform to the jury verdict, we will consider the sufficiency of the evidence to support the jury verdict both as to concealment and facilitating transportation.

The test to be applied in determining the sufficiency of the evidence is whether "reasonable minds could find that the evidence excludes every hypothesis but that of guilt."[4]

Applying this test, the evidence reviewed above is insufficient to support the jury finding that Miss Lee knowingly aided and abetted Lewis in knowingly concealing unlawfully imported narcotics in the station wagon. The narcotics were concealed under the window moulding of the door of that vehicle. There is no evidence

---

[4]Kaplan v. United States, 9 Cir., 329 F.2d 561, 563. See Hiram v. United States, 9 Cir., 354 F.2d 4, 6; Conaway v. United States, 8 Cir., 349 F.2d 907, 910-911.

that Miss Lee was ever closer to the station wagon than one or two blocks.

We think the evidence was also insufficient to support the jury finding that Miss Lee knowingly aided and abetted Lewis in facilitating the transportation of unlawfully imported narcotics. While the showing is exceedingly thin, perhaps the jury could infer that Miss Lee knew the station wagon contained narcotics, that she knew the narcotics had been unlawfully imported, and that she knew that Lewis intended to drive away in that vehicle, with the narcotics in it, when he alighted from the Buick. But we see no basis whatever for a jury finding that Miss Lee aided and abetted the transportation of the narcotics in the station wagon either before or after Lewis entered it.

Insofar as the evidence indicates, Miss Lee was only a passenger in the Buick, and rendered no assistance to Lewis in reaching the place where the driver of the station wagon had been instructed to park that vehicle. Lewis stepped out of the Buick and walked towards the station wagon, whereupon Miss Lee drove away in the Buick. There is no showing that her act in driving away in the Buick aided Lewis in any respect or that it was intended to. The only possibility that suggests itself is that she might have been attempting to divert the attention of customs agents in the vicinity. But there is no solid evidence to support this interpretation of her action in driving away in the Buick, nor is there any showing that she or Lewis were even aware that any law enforcement officers were in the vicinity.

For all the record shows, she may have been driving the Buick on an errand of her own, intending to return when Lewis came back. In that event, her driving of the Buick was no more of an aid to him than if she had remained in it at the place where Lewis left that car. About all this evidence shows is that Miss Lee went along for the ride. Cf. Arellanes v. United States, 9 Cir., 302 F.2d 603, 606.

Miss Lee's attempt to escape gives rise to the inference that she knew something wrong was going on and that she did not want to become implicated in it. But it does not show that her attempted escape or any of her actions prior thereto, were for the purpose of aiding and abetting Lewis in transporting narcotics, or that they had that result.

Affirmed as to Lewis. Reversed and remanded as to Miss Lee, with directions to enter a judgment of acquittal as to her.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LOUISE LEE, LAWRENCE LEWIS, Appellants,	)	No. 21,042
vs.	)	DC #35814
UNITED STATES OF AMERICA, Appellee.	)	

APPEAL from the United States District Court for the Southern District of California, Southern Division

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Southern Division and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed as to appellant Lewis and the said judgment be and hereby is reversed as to appellant Lee and as to her said cause be and hereby is remanded to the

said District Court with directions to enter a judgment of acquittal as to her.

A TRUE COPY:

ATTEST: May 11, 1967,

WILLIAMB. LUCK, Clerk,

By :

/s/ WILLIAM E. WILSON
WILLIAM E. WILSON,
ChiefDeputy.

Filed and entered April 5, 1967

APPENDIX C

MANUEL L. REAL
United States Attorney
PHILLIP W. JOHNSON
Assistant United States Attorney
325 West "F" St.
San Diego, Calif.
Tel: 293 5610

FILED

NOV 29 1966

Clerk, U. S. District Court

Southern District of California
By Deputy

LODGED

JUL 21 1966

Clerk, U. S. District Court
Southern District of California

By Deputy

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	No. 35814-SD
-vs-	FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO MOTIONS TO SUPPRESS EVIDENCE
LOUISE LEE, LAWRENCE LEWIS, Defendants.	

The above matter came on for hearing on motions of defendants LOUISE LEE and LAWRENCE LEWIS for suppression of evidence on January 31, 1966, before the Honorable James M. Carter, United States District Judge. Defendants appeared in person and by their counsel, Robert L. Reid, and plaintiff was represented by Assistant United States Attorney Phillip W. Johnson. Evidence was introduced on behalf of both parties, and the Court having fully considered the same and being fully advised makes the following findings:

I.

The Court finds that on October 8, 1965, a reliable informant informed United States Customs Agent Thaine Ellis that a 1955 Ford automobile with California License GNP 408 would be used to transport a quantity of narcotics into the United States from Mexico; and that a Nevada car would meet and pick up the 1955 Ford. On October 9, 1965, the same informant advised Agent Ellis that the vehicle would cross the border after 10:00 o'clock that morning. The informant had been reliable in the past, having given information to Agent Ellis resulting in arrests in three separate cases. Ellis gave instructions to let the Ford cross the border and to follow it. At 11:45 a. m. on October 9, 1965, Agent Ellis was informed that the said 1955 Ford vehicle had entered the United States at San Ysidro, California. As the vehicle left the Port of Entry at San Ysidro it was followed by a Customs vehicle. Agent Ellis was informed that both vehicles were followed by a third vehicle, a 1963 Buick automobile, Nevada License E-86-561, containing a negro man and a negro woman.

Agent Ellis observed the 1955 Ford in Chula Vista and talked to the driver, who was the informant in the case. He informed Agent Ellis that he had been instructed to park the Ford at 45th and Ocean View in the San Diego area, leave the keys in the ashtray, and leave the vehicle, keeping it under observation, as someone was to pick up the vehicle and return it to him about an hour later.

Agent Ellis, who was in charge of the investigation, conferred with other officers by radio and informed Customs Agent Paul Samaduroff of the events that had taken place. Agent Samaduroff observed the above-described Buick automobile and maintained surveillance of that vehicle. At that time it was reasonable and proper for law enforcement officers to follow and observe the Buick to determine whether its occupants would make contact with the Ford vehicle. There was not sufficient time to obtain a search warrant for the Ford. After Agent Samaduroff observed a male walking from the Buick, which was parked near Ocean View, he was informed that the same person had entered the Ford and was driving it on Ocean View. The driver of the Ford parked the vehicle without any action being taken by officers to stop it. Agent Samaduroff, acting under the directions of Agent Ellis, arrested the driver of the Ford, a negro, who was defendant LAWRENCE LEWIS, and searched the Ford, finding therein the alleged contraband which is the subject of this Motion. Agent Ellis had reasonable grounds to arrest defendant LEWIS at the time that the latter started to operate the Ford. Since Agent Samaduroff was acting under Agent Ellis' directions, Agent Samaduroff had reasonable grounds to arrest defendant LEWIS, as his actions are to be considered in the light of the information available to himself and.

Agent Ellis. Prior to the arrest of defendant LEWIS there were reasonable grounds to search the Ford, and there were additional reasonable grounds after the arrest.

At the time of the arrest of defendant LEWIS after the Ford stopped at the intersection of Logan and 45th Streets in San Diego, defendant LEWIS was either entirely within the Ford or had all of his body except one leg within the Ford. The vehicle was then taken by Customs officers to the Customs office at 6th and Ash Streets in San Diego and was subsequently taken to a service station for purposes of search. There was a hoist at the service station. The Court takes judicial notice of the fact that there was then no hoist at the Customs office. It was reasonable and proper for Customs officers to leave the Logan Heights area for purposes of interrogation and search, and it was reasonable and proper for them to move the vehicle to a service station for purposes of search.

Customs officers also followed and stopped the Buick automobile and arrested the driver, a negro woman, who was defendant LOUISE LEE. There were reasonable grounds to follow the Buick, to arrest LOUISE LEE, and to search the Buick. No contraband was found in the search of the Buick. Defendant LEE has no standing to object to the search of the Ford.

II.

The Court concludes that defendant LEE has no standing to object to the search and seizure in question.

The Court also concludes that the alleged contraband was not found or seized as the result of an unlawful search or seizure, on the following alternative grounds:

A. The officers had reasonable cause to believe that the Ford contained narcotics.

B. Alternatively, the search of the Ford was a proper incident to a lawful arrest.

C. That the Ford was continuously under surveillance of federal officers after it crossed the border and that the search was a border search.

/s/ JAMES M. CARTER
District Judge

11-29-66 nunc pro tunc as of 1-31-66

Presented by:

/s/ PHILLIP W. JOHNSON
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	No. 35814-SD
-vs-	ORDER DENYING MOTION TO SUPPRESS
LOUISE LEE, LAWRENCE LEWIS, Defendants.	

In accordance with the findings of fact and conclusions of law heretofore entered, IT IS ORDERED that the motion of defendants to suppress evidence herein be, and it is, denied.

Dated: 11-29-66.

nunc pro tunc as of
1-31-66

/s/ JAMES M. CARTER

UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 35814-SD
	)	
vs.	)	AFFIDAVIT OF
	)	
LOUISE LEE,	)	SERVICE BY MAIL
LAWRENCE LEWIS,	)	
	)	
Defendant (s)	)	

UNITED STATES OF AMERICA	)	
SOUTHERN	)	ss.
SOUTHERN DISTRICT OF CALIFORNIA	)	

Mary Knisley, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of San Diego County, California; that her business address is 325 West "F" Street, San Diego, California; that she is over the age of eighteen years, and is not a party to the above-entitled action;

That on July 21, 1966, she deposited in the United States Mail at San Diego, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO MOTIONS TO SUPPRESS

EVIDENCE and ORDER DENYING MOTION TO SUPPRESS addressed to Robert L. Reid, Esq., Executive Tower Bldg., 401 So. Third St., Suite 401, Las Vegas, Nevada, his last known address, at which place there is a delivery service of mail from the United States Post Office.

/s/ MARY KNISLEY

SUBSCRIBED and SWORN to before me,
this 21st day of July, 1966.

JOHN A. CHILDRESS, CLERK,
U. S. District Court
Southern District of California

By /s/ MEL MAYER
Deputy MEL MAYER

APPENDIX D

Title 21, U.S.C. Section 174:

"Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under Section 7237(c) 0f the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.

Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 198

LAWRENCE LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 13-22) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 23-24) was entered on April 5, 1967. On May 8, 1967, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to May 26,

1967, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the search of the vehicle driven by petitioner, and the seizure of narcotics therefrom, was supported by probable cause.

STATEMENT

Petitioner was convicted after trial by jury in the Southern District of California of concealing, and facilitating the transportation and concealment of, approximately six ounces of cocaine and one ounce of heroin, imported in violation of 21 U.S.C. 174 (I R. 2). He was sentenced to seven years imprisonment (I R. 16). Prior to trial, he had moved unsuccessfully to suppress the narcotics as evidence; and he unsuccessfully objected when the narcotics were offered during the trial.

On October 8, 1965, Leobardo Sandoval, a Mexican national (II R. 26) and reliable informant who had previously furnished exact license numbers of vehicles and descriptions of persons crossing the border carrying narcotics (the information having in each instance been verified by subsequent arrests) (III R. 95), informed Customs Agent Thaine Ellis that he had been offered fifty dollars by a man whom he knew to be a narcotics dealer (III R. 93) to drive a 1955 Ford Station wagon (which he identified by license number), containing narcotics, from Mexico

to the Logan Heights section of San Diego (II R. 19; III R. 77). Ellis knew that a standard method of smuggling narcotics into this country is to hire Mexican citizens for twenty-five or fifty dollars to drive automobiles across the border, park and leave them, wait for an hour, and then pick up the vehicles and drive them back to Mexico (III R. 103-104).

On October 9, Sandoval called Ellis again and said that final arrangements had been made and that the station wagon containing the narcotics would cross the border at the San Ysidro port of entry at ten o'clock (II R. 19). At eleven forty-five, Ellis was informed by an inspector at the port of entry that the vehicle had been stopped and was being held in a secondary inspection area (II R. 19-20). Ellis directed that it be released without being searched (II R. 24; III R. 78), and arranged to have it followed (II R. 20). The agent who did so informed Ellis by radio that the agent was being followed by a 1963 Buick bearing Nevada license plates. At Ellis' direction, the agent allowed the Buick to pass him (II R. 20).

Ellis stopped the Ford Station wagon and informed Sandoval that he was being followed by the Buick, a fact of which Sandoval was unaware (II R. 21). Sandoval, in turn, told Ellis that there was heroin in the station wagon (III R. 86), and that he had been instructed to park the vehicle at a designated spot in Logan Heights, get out of the vehicle, leave the keys in the ashtray, and wait nearby. He had also been told, he said, that someone would drive the

station wagon away, then return in an hour and leave the vehicle so that he could return it to Mexico (II R. 23).

While Sandoval proceeded in the station wagon, the substance of the information he had given Ellis was communicated by the latter to Customs Agent Paul Samaduroff (II R. 6-7), who was instructed to maintain surveillance of the area in Logan Heights where Sandoval was to leave the station wagon. Samaduroff observed the Buick in this area, saw it park, and saw petitioner walk away from it. Upon being advised by radio that petitioner had entered the station wagon and driven off, he followed the station wagon (II R. 8) and when petitioner parked arrested him (II R. 11, 17). Samaduroff then turned petitioner over to another agent, and drove the station wagon to a service station near customs headquarters, approximately a mile from the site of the arrest, in order to place it on a hoist to search for the narcotics. The narcotics were found in contraceptives concealed in the window moulding (II R. 12-14).

ARGUMENT

Petitioner attacks the search of the station wagon and the seizure of the narcotics on the sole ground that the search cannot be justified either as a border search or as incident to his lawful arrest on probable cause. In regard to the border search, he contends that the narcotics could have been placed in the vehicle when it was stopped on the American side of the border while Sandoval talked to Ellis. In regard to

the arrest, he contends that, since Sandoval did not know him and had never seen him before, there could have been no probable cause justifying his arrest.

The customs agents had sufficient information from Sandoval to give rise to a reasonable belief that the vehicle contained narcotics which had been concealed in it in Mexico, thus justifying search of the vehicle as a border search. See *Alexander* v. *United States*, 362 F. 2d 379 (C.A. 9), certiorari denied, 385 U.S. 977. The same information justified the search as a search of a movable vehicle based upon probable cause to believe that it contained contraband. See *Carroll* v. *United States*, 267 U.S. 132. And since the agents had probable cause to believe that petitioner was the individual to whom the unlawfully imported narcotics were, by prearrangement, to be delivered, his arrest was justified and the search permissible as an incident thereto.[1] The search and seizure may be upheld on any of these grounds.

---

[1] The information known to Ellis was, of course, imputable to Samaduroff, who made the actual arrest and search. *United States* v. *Bianco*, 189 F. 2d 716, 719 (C.A. 3); *Weise* v. *United States*, 251 F. 2d 867 (C.A. 9), certiorari denied, 357 U.S. 936; *United States* v. *Li Fat Tong*, 152 F. 2d 650, 652 (C.A. 2); *Williams* v. *United States*, 308 F. 2d 326, 327 (C.A.D.C.); *Smith* v. *United States*, 358 F. 2d 833, 835 (C.A. D.C.).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
MARSHALL TAMOR GOLDING,
Attorneys.

JUNE 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 O - 256910 989